IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 23416 of 1999

Between:

K.Shiva Goud S/o.Narsa Goud
R/o.H.No.1-34 , Madapur Village , Makloor Mandal Nizamabad Dist.

... PETITIONER

AND

1 Government of Andhra Pradesh

rep by its Superintendent of Prohibition & Excise.
Nizamabad Dist, Nizamabad.
2 Govt of AP Rep by its Prohibition & Excise Inspector
Nizamabad Range , Nizamabad.
3 Collector for Prohibition & Excise
Nizamabad Dist , Nizamabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court be pleased to issue any appropriate writ, order or direction preferably a writ in the nature of Mandamus declaring the Distraint order dated: 7-8-98 passed by the 2nd respondent as being illegal, arbitrary and violative of Article 14 of the Constitution of India and Consequently direct the respondents not to take any action in pursuance to the said Distraint order dated: 7-8-98 and to pass such further or other orders.

Counsel for the Petitioner: MR.P.VENUGOPAL, Advocate

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court Made the Following Order:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 23428 of 1999

Between:

A. Vittal Rao
R/o.H.No.3-1, Madapur Village , Makloor Mandal, Nizamabad Dist.

... PETITIONER

AND

1 Government of Andhra Pradesh

rep by its Superintendent of Prohibition & Excise.
Nizamabad Dist, Nizamabad.
2 Govt of AP Rep by its Prohibition & Excise Inspector
Nizamabad Range , Nizamabad.
3 Collector for Prohibition & Excise
Nizamabad Dist , Nizamabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court be pleased to issue any appropriate writ, order or direction preferably a writ in the nature of Mandamus declaring the Distraint order dated: 7-8-98 passed by the 2nd respondent as being illegal, arbitrary and violative of Article 14 of the Constitution of India and Consequently direct the respondents not to take any action in pursuance to the said

Distraint order dated: 7-8-98 and to pass such further or other orders.

Counsel for the Petitioner: MR.P.VENUGOPAL, Advocate

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court Made the Following Order:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 23429 of 1999

Between:

G. Haridas S/o Balaraj
R/o.H.No.3-46, Donkeshwar Village, Nandipet Mandal, Nizamabad District

... PETITIONER

AND

1 Government of Andhra Pradesh

rep by its Superintendent of Prohibition & Excise.

Nizamabad Dist, Nizamabad.

2 Govt of AP Rep by its Prohibition & Excise Inspector
Nizamabad Range , Nizamabad.

3 Collector for Prohibition & Excise
Nizamabad Dist , Nizamabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court be pleased to issue any appropriate writ, order or direction preferably a writ in the nature of Mandamus declaring the Distraint order dated: 7-8-98 passed by the 2nd respondent as being illegal, arbitrary and violative of Article 14 of the Constitution of India and Consequently direct the respondents not to take any action in pursuance to the said Distraint order dated: 7-8-98 and to pass such further or other orders.

Counsel for the Petitioner: MR.P.VENUGOPAL, Advocate

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court Made the Following Order:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 23440 of 1999

Between:

N. Penta Goud S/o Bala Goud
R/o. Gottumukkala Village , Makloor Mandal, Nizamabad District

... PETITIONER

AND

1 Government of Andhra Pradesh

rep by its Superintendent of Prohibition & Excise.
Nizamabad Dist, Nizamabad.
2 Govt of AP Rep by its Prohibition & Excise Inspector
Nizamabad Range , Nizamabad.
3 Collector for Prohibition & Excise
Nizamabad Dist , Nizamabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court be pleased to issue any appropriate writ, order or direction preferably a writ in the nature of Mandamus declaring the Distraint order dated: 7-8-98 passed by the 2nd respondent as being illegal, arbitrary and violative of Article 14 of the Constitution of India and Consequently direct the respondents not to take any action in pursuance to the said Distraint order dated: 7-8-98 and to pass such further or other orders.

Counsel for the Petitioner: MR.P.VENUGOPAL, Advocate

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court Made the Following Order:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 23419 of 1999

Between:

G. Haricharan, S/o Hanumanlu
R/o.H.No.3-51, Donkeshwar Village, Nandipet Mandal, Nizamabad District

... PETITIONER

AND

1 Government of Andhra Pradesh

rep by its Superintendent of Prohibition & Excise.
Nizamabad Dist, Nizamabad.
2 Govt of AP Rep by its Prohibition & Excise Inspector
Nizamabad Range , Nizamabad.
3 Collector for Prohibition & Excise
Nizamabad Dist , Nizamabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court be pleased to issue any appropriate writ, order or direction preferably a writ in the nature of Mandamus declaring the Distraint order dated: 7-8-98 passed by the 2nd respondent as being illegal, arbitrary and violative of Article 14 of the Constitution of India and Consequently direct the respondents not to take any action in pursuance to the said Distraint order dated: 7-8-98 and to pass such further or other orders.

Counsel for the Petitioner: MR.P.VENUGOPAL, Advocate

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court Made the Following Order:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 23445 of 1999

Between:

C. Bhooma Reddy, S/o Ganga Reddy
R/o Bonkanapalli Village, Nizamabad District

... PETITIONER

AND

1 Government of Andhra Pradesh

rep by its Superintendent of Prohibition & Excise.
Nizamabad Dist, Nizamabad.
2 Govt of AP Rep by its Prohibition & Excise Inspector
Nizamabad Range , Nizamabad.
3 Collector for Prohibition & Excise
Nizamabad Dist , Nizamabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court be pleased to issue any appropriate writ, order or direction preferably a writ in the nature of Mandamus declaring the Distraint order dated: 7-8-98 passed by the 2nd respondent as being illegal, arbitrary and violative of Article 14 of the Constitution of India and Consequently direct the respondents not to take any action in pursuance to the said

Distraint order dated: 7-8-98 and to pass such further or other orders.

Counsel for the Petitioner: MR.P.VENUGOPAL, Advocate

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court Made the Following Order:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 23473 of 1999

Between:

Midde Shankar S/o Narsimulu
R/o Jankampet Village, Edapally Mandal, Nizamabad District

... PETITIONER

AND

1 Government of Andhra Pradesh

rep by its Superintendent of Prohibition & Excise.
Nizamabad Dist, Nizamabad.
2 Govt of AP Rep by its Prohibition & Excise Inspector
Nizamabad Range , Nizamabad.
3 Collector for Prohibition & Excise
Nizamabad Dist , Nizamabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court be pleased to issue any appropriate writ, order or direction preferably a writ in the nature of Mandamus declaring the Distraint order dated: 7-8-98 passed by the 2nd respondent as being illegal, arbitrary and violative of Article 14 of the Constitution of India and Consequently direct the respondents not to take any action in pursuance to the said Distraint order dated: 7-8-98 and to pass such further or other orders.

Counsel for the Petitioner: MR.P.VENUGOPAL, Advocate

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court Made the Following Order:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 23696 of 1999

Between:

B. Motilal S/o Balaram

R/o Nizamabad village & District

... PETITIONER

AND

1. The District Collector (Prohibition & Excise)

Nizamabad District at Nizamabad

2. The Prohibition & Excise Inspector

SHO, Bhodan, Nizamabad District

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order/direction more particularly one in the nature of Writ of Mandamus, directing the respondents not to take any action in pursuance of the Distraint Order dated: 28.10.1999 by declaring the Distraint order as illegal and pass such other order or orders.

Counsel for the Petitioner: MR.B.SAI RAM GOUD, Advocate

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court Made the Following Order:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 23817 of 1999

Between:

A. Sayaram S/o Sayyaji

R/o Nizambad, Nizambad District

... PETITIONER

AND

1. The District Collector (Prohibition & Excise)

Nizamabad District at Nizamabad

2. The Prohibition & Excise Inspector

SHO Nizamabad at Nizamabad District

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order/direction more particularly one in the nature of Writ of Mandamus, directing the respondents not to take any action in pursuance of the Distraint Order dated: 30.10.1999 by declaring the Distraint order as illegal and pass such other order or orders.

Counsel for the Petitioner: MR.B.SAI RAM GOUD, Advocate

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court Made the Following Order:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 23828 of 1999

Between:

Sreedhar S/o Bhoomaiah

R/o Nizamabad District at Nizamabad

... PETITIONER

AND

1. The District Collector (Prohibition & Excise)

Nizamabad District at Nizamabad

2. The Prohibition & Excise Inspector

SHO, Armoor, Nizamabad District

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order/direction more particularly one in the nature of Writ of Mandamus, directing the respondents not to take any action in pursuance of the Distraint Order dated: 29.10.1999 by declaring the Distraint order as illegal and pass such other order or orders.

Counsel for the Petitioner: MR.B.SAI RAM GOUD, Advocate

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court Made the Following Order:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 24312 of 1999

Between:

Alwal Narsing Rao S/o Narsimloo

R/o Madhapur, Makloor Mandal, Nizamabad District

... PETITIONER

AND

1. The District Collector (Prohibition & Excise)

Nizamabad District at Nizamabad

2. The Prohibition & Excise Inspector

SHO Nizamabad, Nizamabad District

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, direction, declaration or order by declaring the action of 1st respondent dated 16.11.1999 as illegal, arbitrary, discriminatory, unreasonable, unjust without any jurisdiction and opposed to public policy and violating Article 14, 21 and 300-A of Constitution of India and also violative of principles of natural justice and set aside the same and issue consequential directions of refund the rentals of two months paid as deposit etc. with interest @18% per annum from 01.12.1989 to till now and award costs of the litigation and pass such other order or orders

Counsel for the Petitioner: MR.K.M. MAHENDER REDDY, Advocate

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court Made the Following Order:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 24482 of 1999

Between:

Aruguala Devanna S/o Devanna

R/o Vannel-B village, Balkonda Mandal, Nizamabad District

... PETITIONER

AND

1. The District Collector (Prohibition & Excise)

Nizamabad District at Nizamabad

2. The Prohibition & Excise Inspector

Armoor Circle, Nizamabad District

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any order/direction more particularly one in the nature of Writ of Mandamus, declaring the impugned proceedings of distraint order vide proceedings No.D3/556/92 dated 01.11.1999 passed by the 2nd respondent as illegal in respect of payment of arrears Rs.1,07,964/- of Arrack Shop, Vannel-B village, Balkonda Mandal, Nizamabad District and pass such other order or orders which are necessary in the interest of justice.

Counsel for the Petitioner: Ms. J.D. YESHODA, Advocate

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court Made the Following Order:

WRIT PETITION Nos.23416, 24482, 24312, 23828, 23517, 23696, 23473, 23445, 23419, 23440, 23429 & 23428 OF 1999

COMMON ORDER:

The issue involved and the points that arise for consideration in all these writ petitions is same as such all are being decided by a common order.

The factual backdrop of these cases relevant for the purpose of present proceedings may be stated thus:

Petitioners are all excise contractors who have participated in the auction to sell arrack in retail in respect of the shops notified in Nizambad District and they being the highest bidders, necessary licences were granted under the Andhra Pradesh Excise (Arrack Retail Sale Special Conditions of Licences) Rules 1969. After obtaining licences to sell arrack, petitioners have started business but due to extremists threats they were forced to close down their

business premises and have written about surrendering of their licences to the authorities due to the extremist activities they were unable to do business and the authorities failed to provide any protection for the sale of arrack. In view of the same, the licences were liable to be cancelled and on such cancellation the respondents are at liberty to notify the said shop and conduct public auction. But they have not conducted such auction due to the fear of extremists. But after a decade of the said surrender of licences the authorities issued the Distraint Order calling upon the petitioners to pay the amount determined towards their liability for not lifting the Minimum Guarantee Quota (MGQ) and the resultant loss to the State. Assailing the correctness of the same present writ petitions are filed.

The Sub Divisional (Prohibition and Excise) Officer, on behalf of the respondents filed a counter stating that petitioners who have participated in the auction for excise year 1989 – 1990 and having obtained the licences to lease arrack shops on highest bid offered by them to lift MGQ of arrack, failed to lift the same. The State suffered loss for the amounts as mentioned.

The main submission of the learned counsel for the petitioners is that before determining the amounts due for non-lifting of Minimum Guarantee Quota (MGQ) no notice was issued nor petitioners were called upon to explain reasons for not lifting the MGQ before fastening the said liability on the petitioners. The MGQ lifted and the amounts adjusted from the deposits have not been taken into consideration before arriving the said figure. It is the responsibility of the State Government to protect the licensees from the activities of the extremists forcing to close down the shops. The amount so determined is in violation of principles of natural justice, since the arrack lifted and the amount adjusted from the deposits have to be given credit after due notice to the licensees. In the absence of any notice impugned order is in violation of principles of natural justice.

On the other hand, learned Government Pleader for Excise contends that once there is a counter part agreement between the petitioner and the official respondents, in which licensees have undertaken to lift the highest bid MGQ and on failure to lift the same they are liable to compensate the loss sustained by the State Government and no further notice is required for due recovery of the amounts.

Rule 22(2) of the Arrack Rules provides that where a licence is cancelled under the provisions of the Act or Rules made thereunder the right to sell arrack shall be redisposed subject to the same conditions and liabilities laid down in the rules.

> *"Any resultant loss on account of the taking management under the Collector or re-disposal of the lease shall be recovered from the deposits of the defaulting licensee and the balance of dues if any after such adjustment shall be recovered from the properties of the defaulting licensee under the provisions of the Andhra Pradesh Revenue Recovery Act, 1864."*

Thus, it is seen that under sub-rule (2) of Rule-22 of the Arrack Rules, the resultant loss on account of taking management under the Collector or re-disposal of the lease is to be recovered from the deposits of the defaulting licensee and balance due if any can be recovered under the provisions of the Revenue Recovery Act.

In order to ascertain the validity of notice issued it is relevant to extract Section 52 of Revenue Recovery Act, which reads as under:

> *"All arrears of revenue other than land-revenue due to the State Government all advances made by the State Government, for cultivation or other purposes connected with the revenue, and all fees or other dues payable by any person to or on behalf of the village servants employed in revenue or police duties, and all cesses lawfully imposed upon land and all sums due to the State Government, including compensation for any loss or damage sustained by them in consequence of a breach of contract, may be recovered in the same manner as arrears of land revenue under the provisions of this Act unless the recovery thereof shall have been or may hereafter be otherwise specially provided for."*

A bare reading of the aforementioned provision would authorise that all sums due to the State Government, including compensation for any loss sustained by them in consequence of a breach of contract, may be recovered in the same manner of land revenue under the provisions of the Act.

It is convenient to consider the submissions in the context of the principles laid

down in the following cases:

This Court in **B.C. Mulajkar v. Government of Andhra Pradesh** categorically held that

> *" .....Section 52 does not expressly provide for an enquiry or determination of the sums due to the Government. According to the Dictionary the word "due" means that which is owed: What one has a right to: fee, toll charge or tribute. How much sum is owed by the appellant or what amounts the respondents have a right to recover has first to be arrived at before the same could be recovered as a sum due to the Government. When there are disputes between the alleged debtor and the Government with regard to the liability itself or as to the quantum of said liability it is but proper that the alleged debtor should be furnished with the material or data on which the liability is sought to be fixed.*
>
> *Cases where the amount due is admitted or is determined by a competent authority under a special enactment providing for an enquiry in that behalf, are different and would not present much difficulty. In other cases where no enquiry is at all held and the Government seeks to recover the amount, the question arises whether such a liability could be fastened upon the alleged debtor without first determining the liability and the quantum of the said liability. It is an elementary principle that principles of natural justice require that the person who is sought to be fastened with a liability should first be apprised of the facts and he should be given an opportunity to make his representations in that behalf. In our view the expression "sums due" does imply an obligation on the part of the State Government when the liability is disputed, to hold a proper enquiry and furnish the person from whom the amount is sought to be recovered, the full particulars or facts, hold an enquiry, consider the representations and first determine the liability or otherwise for the sum said to be due.*
>
> *Normally in all cases where the amounts are due under a loan or contract or by way of compensation for breach of a contract, the party aggrieved has to proceed by way of a suit in a civil Court and the party sought to be made liable will then have an ample opportunity of contesting the claim. But Section n 52 of the Act which is a special provision and which enables the Government to recover the amounts as arrears of land revenue, is a drastic provision and presumably this provision is made in the interests of expeditious collection of the amounts due to the Government. Even so, the provisions of Section 52 of Act have to be interpreted in such a manner so as to accord with the principles of natural justice and that the party sought to be proceeded against should at least have the minimum safeguard of having an opportunity to know the basis and the material on which the liability is sought to be imposed upon him and to rebut the same by placing the necessary material in that behalf before the appropriate authority of the Government.*

Whether the proceedings taken under Section 52 of the Act are quasi-judicial or administrative in character, it is incumbent upon the Government to observe the basic principle of natural justice viz., that the party affected should have a reasonable notice of the case he has to meet and a reasonable opportunity of making his representations against the same by producing the relevant material on which he relies. Justice and fair play demand that such a notice should be given even by an administrative authority. In our opinion therefore before the Government could recover the sums due under Section 52 of the Act, the appellant should be furnished with the relevant material on which the amount is said to be due, and give an opportunity to the appellant to make his representations and produce the relevant material substantiate his representations and thereafter determine the liability. Only on such determination of the liability and the amount due thereunder, the Government can take proceedings under Section 52 of the Act for recovering the amount. In other words the recovery proceedings under Section 52 of the Act should be preceded by an anterior determination of the liability and the amount due towards such liability."

The Supreme Court in **S.K. Bhargava, Appellant v. Collector, Chandigarh and others,** while judging the validity of proceedings undertaken under Section 3 of Haryana Public Moneys (Recovery of dues as arrears of land revenue) held that:

"…*even though Section 3 does not expressly provide for an opportunity being given to the alleged defaulter to explain as to whether any amount is due or not but in view of the nature of the said provision, the principles of natural justice must be read into it. The requirement of determination of the sum due by the Managing Director must be regarded as providing for the Managing Director hearing the alleged defaulter before coming to the conclusion as to what is the sum due. The very use of the word 'determine' and 'sum due' implies that there may be a lis between the parties and they have to be heard before a final conclusion is arrived at by the Managing Director. It is not a mere claim of the Corporation which is forwarded to the Collector for realisation, but it is the 'sum due' as determined by the Managing Director which alone is recoverable. As already observed, this determination cannot be done without notice to the alleged defaulter."*

This Court in **Mandela Nagasurya Ranga Rao v. Excise Superintendent, Eluru and others** considered the power of the excise officials to recover the amount under section 52 of the Andhra Pradesh Excise (Lease of Right to Sell Arrack in Retail) Rules 1988 and held that the excise officials

did not give any particulars in arriving at the said figure. Therefore, it cannot be said that the defaulter owes an amount to the Excise Authorities. The notice issued for the resultant loss, without giving an opportunity to the defaulter before fixation of the resultant loss under Rule 22 of the Arrack Rule, appears to be bad and it cannot be said that this was a sum due to the Stat Government.

Admittedly, it is not the case of the respondents that the petitioners/defaulters were provided with an opportunity before determining the loss or damages sustained for not lifting the MGQ and fixing the liability on the licensees for the resultant loss sustained by the State.

In view of the same, the impugned Distraint Order issued without there being any enquiry and which is in violation of principles of natural justice, cannot be sustainable and it is accordingly set aside. The respondents are at liberty to follow the procedure for such determination and only on such determination they can recover the same.

_____

(A. GOPAL REDDY, J)

June 25, 2004

Dsk/Murthy

To

1. Superindent of Prohibition & Excise, Nizambad District, Niambad
2. Prohibition & Excise Inspector, Nizambad Range, Nizambad
3. Collector for Prohibition & Excise, Nizamabad District, Nizambad

4. The Prohibition & Excise Inspector, SHO, Bhodan, Nizambad District

5. The Prohibition & Excise Inspector, SHO Nizamabad at Nizamabad District

6. The Prohibition & Excise Inspector, SHO, Armoor, Nizamabad District

7. Two C.Cs to G.P for Prohibition & Excise, High Court Buildings, Hyderabad